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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74–878

THE NATIONAL LEAGUE OF CITIES, *et al.*
Appellants

v.

THE HONORABLE PETER J. BRENNAN,
SECRETARY OF LABOR OF THE UNITED STATES,
Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF AMICUS CURIAE ON BEHALF OF THE INTERNATIONAL CONFERENCE OF POLICE ASSOCIATIONS, URGING AFFIRMATION

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BRIEF AMICUS CURIAE ON BEHALF OF THE INTERNATIONAL CONFERENCE OF POLICE ASSOCIATIONS, URGING AFFIRMATION.[1]

[1] Pursuant to Rule 42, paragraph 2, there have been lodged with the Clerk the written consents of the counsel of National League of Cities, et al., the Attorney General of the State of California, and of the Solicitor General of the United States to the filing of this brief *amicus curiae*.

QUESTIONS PRESENTED

1) Whether state and local law enforcement agencies import significant amounts of goods through interstate commerce thereby bringing these agencies within the coverage of the 1974 Amendments to the Fair Labor Standards Act of 1938.

2) Whether strikes, work stoppages, slowdowns and other labor disputes in state and local law enforcement agencies have an impact sufficient to impede the flow of goods through interstate commerce.

INTEREST OF AMICUS CURIAE

The International Conference of Police Associations is an international organization composed of individual police organizations that have banded together for a common goal: the professionalization of the police officer. The International Conference of Police Associations is one of the largest organizations of its kind in the world and represents approximately 200,000 police officers throughout the United States, Canada, and the Panama Canal Zone.

The 1974 Amendments to the Fair Labor Standards Act of 1938 extend the Act's basic wage and hour standards to approximately 400,000 police officers of the several states and their political subdivisions. As a national representative of a substantial number of these police officers, the International Conference of Police Associations seeks to ensure that these law enforcement employees are accorded the same employment protection and advantages enjoyed by the majority of American citizens. The International Conference of Police Associations therefore supports the 1974 Amendments as being constitutional and fully applicable to the police.

ARGUMENT

1. Whether state and local law enforcement agencies import significant amounts of goods through interstate commerce thereby bringing these agencies within the coverage of the 1974 Amendments to the Fair Labor Standards Act of 1938.

Every year hundreds of millions of Federal dollars are poured into state and local law enforcement activities. In 1971, $153,956,000, and in 1972, $225,518,000 of Federal support went to state and local police departments. A substantial portion of this money every year goes directly into manpower development on the state and local level.[2] These Federal contributions to manpower development significantly impact the labor costs of state and local police departments throughout the nation.

These Federal funds are combined with money from state and local governments to purchase the goods that are essential for effective law enforcement. In 1970 state and local law enforcement agencies spent four and one-half billion dollars. This amounted to approximately three billion dollars more than was spent on any other segment of the criminal justice system.[3] These expenditures went directly or indirectly into interstate commerce. Patrol cars, helicopters, police laboratory equipment, radio equipment and other goods essential to effective law enforcement were generally obtained through interstate commerce. Every year state and local law enforcement agencies have and will continue to make substantial purchases of goods through interstate commerce.

These interstate purchases are but a part of the complex and far-reaching connections of state and local law enforcement

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[2] $22,500,000 of Federal funds went directly into manpower development in 1971 and $31,000,000 in 1972. Law Enforcement Assistance Administration, United States Department of Justice, ***Sourcebook of Criminal Justice Statistics*** 29 (1973).

[3] *Id.* 36.

agencies with interstate commerce. Modern law enforcement is a highly organized, technologically sophisticated and nationally coordinated effort.

Basic to effective law enforcement is relevant information. This information is provided and transmitted through a nationwide web of teletype cables, computer terminals and data banks. The National Crime Information Center (NCIC), operated by the Federal Bureau of Investigation, is a computerized index containing information on wanted persons and stolen property. State and local police departments have direct computer hookups with this system which ensures a constant flow and exchange of vital information on an interstate and nationwide level.

The National Law Enforcement Teletype System (LETS) enables state and local police departments to maintain constant communication in tracking down fugitives, retrieving stolen property and fighting organized crime. The Fingerprint and Criminal Identification File, the Known Professional Check Passers File (PROCHECK), and the nationwide distribution of police circulars are just a few of the many intimate connections state and local police departments have with interstate commerce.

Every year hundreds of thousands of tons of interstate freight travel across the nation's highways. This peaceful and profitable flow of interstate commerce is made possible by the efforts of thousands of state and local police officers that patrol the many miles of interstate highways criss-crossing the country.

2. **Whether strikes, work stoppages, slowdowns and other labor disputes in state and local law enforcement agencies have an impact sufficient to impede the flow of goods through interstate commerce.**

Police labor disputes, unlike other labor disruptions, have a double impact upon interstate commerce. First, the police strike or work stoppage adversely affects interstate commerce

in the same manner as any labor dispute. Second, this primary adverse effect is compounded by a consequent ineffective enforcement of state and local laws that directly interferes with the peaceful and productive flow of goods through interstate commerce.

The question of the interstate impact of police labor disputes was decisively answered by the results of the Boston police strike of 1919. Although the strike only lasted four days the results were devastating.

> "Looting of shops and stores began on the same day as the strike. The total property damage of the strike amounted to more than one million dollars, the result of pillaging and looting. The Massachusetts State Guard was summoned on September 10 to protect the City. Three persons were killed on this day when the Guard attempted to suppress a riot in South Boston."[4]

The catastrophic effects of a police strike were once again made clear a half a century later when 3700 members of the Montreal Police Department went on strike in October of 1969. Three persons were killed and one million dollars of destruction resulted from looting and vandalism.[5]

Despite these occurrences, the great sense of dedication and the commitment of police officers as true professionals have made police strikes few and far between. While strikes are atypical among police officers, other forms of labor disruptions have occurred with some frequency and with significant effects on interstate commerce. Sick calls (also known as "blue flu" or "Hong Kong flu"), mass resignation,

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[4]J. Burpo, *The Police Labor Movement: Problems and Perspectives* 4 (1971).

[5]Clark, *The Day the Police Went Away*, Los Angeles Herald-Examiner (Los Angeles), November 30, 1969, at A-3.

and attendance of professional seminars are some of the means by which police seek to achieve the minimum pay, overtime, and employment terms automatically accorded other American citizens for over three decades by the Fair Labor Standards Act of 1938. The police, through their support of the 1974 Amendments, seek to achieve what the Congress has already mandated as the bare minimum in minimum wage and overtime provisions for the American employee.

The police have traditionally been denied the minimum vehicles for ensuring, through their own efforts, the achievement of adequate pay and working conditions. As late as 1969 police officers were restricted in organizing and joining employee organizations by state statutes, municipal ordinances and departmental regulations.[6] It was not until 1968 and 1969 that Federal courts dealt a blow to state laws prohibiting formation of or membership in a public employee union.[7] Moreover, as late as 1969, only three states had binding arbitration statutes for policemen and only twenty-seven states had collective bargaining statutes that permitted direct bargaining by the police as an organization for the purpose of negotiating improved benefits.

The gradual extension of the Fair Labor Standards Act of 1938 and its amendments to virtually all sectors of the labor community except police has contributed to police labor problems. Inadequate salaries, job dissatisfactions and the lack of outlets for the satisfaction of these grievances have generated a growth in police labor activities for the past two decades.[8]

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[6] ***The Police Labor Movement, supra*** note 4, at 61.

[7] ***McLaughlin v. Tilendis,*** 398 F.2d 287, 289 (1968); ***American Federation of State, County and Municipal Employees v. Woodward,*** 406 F.2d 137 (1969).

[8] H. Juris,

Recent statistics show that police work stoppages have increased over the past twenty years. One hundred twenty-seven work stoppages occurred in the protective services (police and fire) from 1966 through 1969, compared to sixteen for 1958-1965.[9] A government employee relations report index count revealed thirteen police stoppages between May 1970 and January 1971 alone.[10]

The labor experience of the last two decades has brought a decisive message:

> ". . . the police, who appear to perceive themselves as doing a difficult job for relatively low economic rewards compared to civilians, will take steps to increase their rewards or reduce their efforts."[11]

[9] White, ***Work Stoppages of Government Employees,*** 92 Monthly Labor Review 29 (1969).

[10] H. Juris & P. Feuille, ***Police Unionism*** 192 (1973).

[11] ***Id.*** 23.

CONCLUSION

The International Conference of Police Associations emphatically supports the inclusion of the police under the 1974 Amendments and the constitutionality of this statute. The law enforcement agencies of state and local government have the effects on interstate commerce required by the Fair Labor Standards Act. First, state and local law enforcement agencies using their own and Federal funds make substantial purchases of goods through interstate commerce. Second, police labor disputes burden and obstruct commerce and the free flow of goods in commerce.

The 1974 Amendments do not, at this phase of their implementation, accord police the full minimum wage and overtime benefits given the vast majority of other employees covered by the Act.[12] Notwithstanding this fact, the International Conference of Police Associations firmly believes that the police are fully entitled to coverage under the Act in principle in order that the laws relating to law enforcement activities may be brought into closer agreement with the realities of those activities. One of these basic realities is that the typical police officer, contrary to the format of existing legislation, works a five day forty hour week. The existing 7(k) exemption embodies a Congressional compromise wherein the state and local governments were able to create a legal mechanism whereby the police officer will be deprived, as it now stands, of twenty hours of overtime pay during every seven day work period. Appellants now seek to deny police officers even this *pro forma* protection.

Every workday the American police officer puts his life on the line to protect his fellow citizens. As the law now

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[12]The Fair Labor Standards Act of 1938, as amended 29 U.S.C. 201 *et seq.* provides a special option for computing overtime in Sec. 7(k) that denies police overtime in a seven day period until hours in excess of 60 have been worked. With the exception of the fire fighters other non-exempt employees are entitled to overtime at one- and one-half the regular rate for all hours worked over 40.

stands, state and local governments are seeking to deny the police officer what the Congress and what this Nation has considered for over three decades to be the minimum standards of fair employment. The police officer, now denied in most states the full set of negotiating tools for achieving his employment goals, has sought the aid of the Congress and of this Court. The appellants have argued that they do not have the funds to adequately compensate the police. Appellants ***must*** find these funds to accord the police officer what is already accorded virtually every other American worker.

/S/ _____

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[13]Counsel for ***amicus*** wishes to acknowledge the valuable assistance rendered in connection with this brief by Zane A. Lang, a third year student at the George Washington University National Law Center, Washington, D.C.